IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.MC.No. 2547 of 2007()

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CC.707/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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PETITIONER: ACCUSED:

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1. P.C. ABU, AGED 62 YEARS,
   S/O. MOHAMMED HAJI, CHIRACKAL HOUSE,
   PULLAZHY, THRISSUR.

2. C.K. SOUDHA, AGED 57 YEARS,
   W/O. P.C. ABU, RESIDING AT CHIRACKAL HOUSE,
   PULLAZHY, THRISSUR-680 012.

BY ADV. SRI.RAJIT

RESPONDENTS: STATE:

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STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**Crl.M.C. No. 2547 OF 2007**

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Dated this the 9th day of August, 2007

**ORDER**

The petitioners face indictment in a prosecution, inter alia, under Sec.420 of the IPC. Cognizance was taken by the learned Magistrate as early as in 2001. The case against some co-accused have come to an end and they have been acquitted by this Court as per the order dated 6/4/05 in Crl.M.C.1142/02. Against the petitioners, proceedings are continuing. Consequent to the non-appearance of the petitioners before the learned Magistrate, the learned Magistrate has issued coercive processes against the petitioners. The petitioners find warrants of arrest issued by the learned Magistrate chasing them.

2. According to the petitioners, they are absolutely innocent. Their absence earlier was not wilful; but was due to reasons beyond their control. The petitioners are now willing

to surrender before the learned Magistrate and co-operate with the court for the expeditious disposal of the proceedings against them. The petitioners apprehend that their applications for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances, that the petitioners have come to this Court for a direction to the learned Magistrate to release them on bail when they appear before the learned Magistrate.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to

the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

5. The learned counsel for the petitioners finally submits that the petitioners are ill and that if rigid insistence on personal appearance of petitioners were made on all dates of posting, it would work out great hardship, prejudice and loss to the petitioners. It is for the petitioners to make proper applications before the learned Magistrate for exemption from appearance on the dates when their presence is not required. I have no reason to assume that the learned Magistrate would not consider such applications on merits and in accordance with law. Every court must do the same. No specific directions are hence necessary.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge